

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 541 of 1997

WITH

APPEAL FROM ORDER NO. 542 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JEKISHANDAS PARBHUBHAI PATEL THRO'P.O.A.NARANBHAI D PATEL

Versus

MADHULIKA CORPORATION

Appearance:

MS KJ BRAHMBHATT for Petitioners

MRS KETTY A MEHTA for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 06/02/98

COMMON JUDGEMENT

These two appeals are against common order made deciding of two application under Order 38 Rule 5 and Order 39 Rule 1 & 2. The appeal No.542/97 is against the order of the learned Civil Judge (S.D), Surat dated

19.7.97 rejecting the plaintiffs appellants application for attachment before judgment the properties of the defendants respondents vide their application Exh.6. The case of the plaintiffs in the suit is that by a registered sale deed 26.5.89 2500 sq.yards of property was transferred to the respondent defendant Corporation for a consideration of Rs.20 lacs of which Rs.25000/were only received as advance. Having failed to recover the balance of price suit has been filed for recovery of the balance price as well as damages against alleged utilisation of extra FSI by projecting open space of plaintiffs adjoining the property sold to the respondent as available for use of the building to be constructed over the land in dispute. The claim for damages is over a crore of rupees. The total suit is for a recovery of Rs1,94,31,664/- which includes a claim to recover balance of sale consideration with interest and damages. The attachment before judgment has been prayed in respect of the flats constructed over this land. The defendants in their reply have pleaded that entire consideration has been paid and the flats or shops constructed over the land in disputed have all been allotted to respective parties and are now nomore in possession of the defendant nor are the property of the defendant. The defendant only claimed to be owner of the land over which the building is constructed in substance while according to defendant land vests in him, the structure over it is not his property.

2. The Trial Court taking note of this fact and finding that prima facie no flat is available and in possession of the defendant which could be attached the application for attachment before judgment in respect of the properties not belonging to defendant has been rejected.

3. The appeal No.541/97 is also against the very same order rejecting the application of the plaintiffs for interim injunction Exh.5 for restraining the defendant from transferring or parting with possession of the apartments constructed over the land. In the aforesaid circumstances when no apartments are prima facie available with the defendant for transferring the application for interim injunction has also been rejected.

4. Having heard Learned Counsel for the parties and perused the order and other records produced before me, I am of the opinion that the learned judge has rightly come to the conclusion about both the subject matters in rejecting application for attachment before judgment as

well as application for interim injunction and the order does not call for interference. Hence both the appeals are hereby dismissed. There shall be no order as to costs. Interim order passed by this court shall stand vacated.

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